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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Elizabeth Nelson,
Albert Thrower,

-vs-

Robert Scott
(deceased substitute estate)

Service Towing Inc.,
Able Towing LLC

Dennis Hertz

Bruce Hertz

Sandra Hertz

Randy Sullivan (ID'd-Doe) — *AKA Randall*
(originally named Randy Hertz)

4 John Doe Warren Police Officers

City of Warren, MI

FILED
MAY 29 2024
CLERK'S OFFICE
DETROIT

Case No. 23-cv-11597

Judge McMillion

Magistrate Ivy, Jr

Jury Trial Demanded

3rd AMENDED COMPLAINT PER COURT ORDER

Preliminary Statement:

This is a civil rights action filed by Elizabeth Nelson, Michigan citizen of MACOMB COUNTY, Albert Thrower, Cuyahoga County, Ohio citizen for damages under 42 USC Section 1983 alleging illegal search and seizure 7/7/21, 7/8/21 under 4th, 5th, 14th Amendment United States Constitution and state law torts of assault and battery, kidnapping, trespassing, theft

- 1) This action seeks money damages because of city of Warren employee's participation, conspiring, acting in concert with private parties violating plaintiffs' United States Constitutional rights, wrongful deprivation of (Ps'=plaintiffs) property and state law crimes of trespassing, assault and battery, kidnapping, theft, abuse of process.
- 2) (Ps') allege that all defendants (Ds') acted "under color of state law", "acting in their individual capacities" and violated (Ps') rights under the 4, 5, 14th Amendment of the United States Constitution.
- 3) (Ps') bring state law claims pursuant to Court's supplemental jurisdiction of trespass, theft, assault and battery, kidnapping, false imprisonment, abuse of process.
- 4) At all times defendant private parties (Ds') Service Towing Inc=STI, Able Towing LLC=hereinafter STI, Dennis and Bruce Hertz=hereinafter Hertz Bros., Sandra Hertz-registered agent, employee Randy Sullivan (misnamed Randy Hertz) "conspired", acted "in concert", tandem with state actors in deprivation of (Ps') United States Constitutional rights 4, 5, 14th Amendment.

The City Council is elected for a four year term with five council members elected for each of the five districts, and two at large. See below for more detail, as well as a map. The Council President, Vice-President, Secretary and Assistant Secretary of the Council are chosen by the Council. The Council as a legislative body, determines the overall policy to be followed by the administration, and is charged with enacting such legislation as would serve the best interests of the City.

JURISDICTION

- 5) This Court has jurisdiction over Plaintiffs' federal claims under 42 USC Sec. 1331(a) and 1343
- 6) Court has supplemental jurisdiction over (Ps') state law claims under 28 USC Sec 1367.
- 7) Venue is in United States District Court for the Eastern District of Michigan pursuant to 28 USC Sec 1391 where acts occurred in Macomb County, MI.
- 8) (P) Nelson is Macomb County Michigan resident and rented apartment at 7568 Hudson Ave Warren MI during the facts alleged in complaint.

- 9) (P) Thrower is a Cuyahoga County Ohio resident that per written lease has option of any of 4 vacant apartments in 7568 Hudson Ave Warren MI property and is manager of building
- 10) Service Towing Inc., Able Towing LLC hereinafter STI is a Warren MI Towing Company with it's offices located at 6006 Rinke Ave Warren MI 48091
- 11) (Ds') Bruce Hertz, Dennis Hertz are owners of STI Towing and (D) Sandra Hertz is resident agent and also an owner of STI
- 12) Randy Sullivan (previously misidentified as Randy Hertz) is an employee of STI.
- 13) (D) Robert Scott is supervisor of (D) City of Warren Property & Maintenance Dept Warren MI-he died 3/24. His estate is substituted
- 14) All of the private parties (Ds') Hertz Brothers, (D) Sullivan acted "under of color of state law", acting "in concert", "conspiracy" with state actors per facts alleged "to be engaged in joint action, a private party must be a "willful participant" with the state or its agents in an activity which deprives others of constitutional rights. *Dennis*, 449 U.S.at 27. A private party is liable under this theory, .. its particular actions are "inextricably intertwined" with those of the government. *Brunette*, 294 F.3dat 1211. Substantial cooperation between the private party and the state must be shown. *Mathis. Pac. Gas & Elec.Co.*,75 F.3d 498, 503 (9thCir. 1996). An agreement between government and a private party for some governmental-type action can create state action" Substantial coordination and integration between the private party and the government are the essence of a symbiotic relationship. *Id.* A significant financial integration may form the nexus of a symbiotic relationship. *Rendell-Baker*, 457 U.S. at 842-43. A symbiotic relationship may also arise from of the government's exercise of control over the private party's actions. "*Brunette*, 294 F.3d at 1213. (D) STI and Hertz Bros., Sandra Hertz, Randy Sullivan fit this definition for liability of private parties acting in concert with (D) Scott.
- 15) (D) City of Warren MI is a local government entity which (D) Scott and (D) police Does work for. It is being sued for "failure to train" it's employee's.

Per *Collins v. Virginia*, 584 U.S. ____ (2018) it is well settled law that (Ds') needed a search warrant to enter (Ps') residence property (curtilage) and take personal property and tow two cars 7/7/21 per FACTS *infra* "Fourth Amendment's protection of curtilage has long been black letter law. "[W]hen it comes to the Fourth Amendment, the home is first among

equals.” *Florida v. Jardines*, 569 U. S. 1, 6 (2013). “At the Amendment’s ‘very core’ stands ‘the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.’ ” *Ibid.* (quoting *Silverman v. United States*, 365 U. S. 505, 511 (1961)). To give full practical effect to that right, the Court considers curtilage—“the area ‘immediately surrounding and associated with the home’ ”—to be “ ‘part of the home itself for Fourth Amendment purposes.’ ” *Jardines*, 569 U. S., at 6 (quoting *Oliver v. United States*, 466 U. S. 170, 180 (1984)). “The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened.” *California v. Ciraolo*, 476 U. S. 207, 212–213 (1986).

When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. *Jardines*, 569 U. S., at 11. Such conduct thus is presumptively unreasonable absent a warrant.”

16) On 7/7/21 (D) Scott learned (P) Thrower arrived to mow grass at 7568 Hudson Ave Warren MI.

17) (D) SCOTT learning (PT) arrived called (Ds’) STI, Hertz Brothers, Randy Sullivan to meet (D) SCOTT and tow vehicles from 7568 Hudson Ave

18) (PT)= plaintiff Thrower was in his apartment @ 7568 Hudson Ave and saw and heard (D) STI tow company, (D) Hertz Brothers, and/or employees (D) Sullivan towing his 2011 Silverado & Honda directed by (D) Scott.

19) (PT) saw (D) SCOTT throw (PT) mower in the back of the (PT) Silverado upside down ruining same.

20) (PT) was in 7568 Hudson Ave and heard (D) SCOTT scream at (Ds) STI Towing, Hertz Brothers and or employee (D) Sullivan “I want the Honda towed”.

21) 2008 Honda Civic was parked on concrete drive behind 7568 Hudson Ave.

22) (PT) heard (D) Hertz Brother or employee (D) Sullivan say “I can’t tow Honda without damaging it because it’s at an angle”. (D) SCOTT responded, “I don’t care I want it towed anyhow”

23) (D) Scott later caused 37th District Court Judge Chumra to issue a CYA court order after towing cares and issue misdemeanor warrant for (PT) arrest dated 7/7/21. Judge Chumra order delineated to tow “inoperable vehicles”

- 24) 7/7/21 court order is void as a matter of law since:
- a) Issued without notice or an “opportunity to be heard” or probable cause
 - b) Cars towed were “operable” so assuming arguendo court order was valid, it was limited to “inoperable” vehicles and (Ps’) 2 vehicles were “operable”
 - c) Order was not a “search warrant” to enter private property
 - d) Cars were licensed, insured, and no ticket for “blight” or other infraction issued
 - e) 2008 Honda was driven by renter (PN)=plaintiff Nelson who had taken an ambulance to Ascension Hospital days before and was in the hospital when her Honda was towed
 - f) Order as a matter of law did not allow (D) SCOTT to enter private property without a search warrant as a matter of law per *Collins v Virginia, supra*.
- 25) (PT) saw (D) SCOTT take (PT) “personal property” grill, gutter attached to house, wood from 7568 Hudson Ave address
- 26) (D) SCOTT billed (PT) \$687.50 for illegally taking property 7/7/21 in his alleged capacity as supervisor of property and maintenance
- 27) On 7/8/21 (PT) went to (D) STI 6006 Rinke Ave Warren MI to retrieve Silverado at about 8.30 AM.
- 28) (D) Hertz Brother &/or employee (D) Sullivan stalled (PT) per earlier agreement with (D) Scott-for approximately 30 minutes pretending like (D) could not find (PT) Silverado.
- 29) (PT) was told to wait in STI garage and (D) Scott arrived and attacked (PT) running up on him in (D) STI garage and physically restraining (PT) while (Ds’) Hertz Bros &/or Sullivan watched
- 30) (PT) yelled “what are you doing”? (D) SCOTT said “I am doing a citizens arrest, there is warrant out for you for housing violations.”
- 31) (PT) told (D) Scott that under MI law he could not perform a citizens arrest for alleged misdemeanor housing violations.
- 32) (PT) called 911 to report kidnapping in process and assault and battery, with (D) SCOTT knocking phone out of (PT) Thrower’s hand injuring same after 911 operator answered
- 33) (D) Scott searched (PT) Aldi’s bag

34) On 7/21/21 (PT) filed a police report for (D) Scott "assault and battery", "kidnapping"
Incident #21-33784

35) (PN) after exiting Ascension Hospital had to retrieve her "operable" Honda from (D) STI
towing paying \$330 tow fee. Rear bumper damaged. Paint \$880

36) (PT) paid \$330 to retrieve Silverado from (D) STI at a later date

CLAIM NUMBER ONE

Per facts same rewritten herein (D) Scott in tandem, conspiracy, agreement with (Ds') STI, Hertz Brothers, employee (D) Randy Sullivan violated the (Ps') 4, 5, 14th Amendment rights United States Constitution when they entered on to the 7568 Hudson Ave property, curtilage, 7/7/21 without search warrant and towed 2 operable vehicles belonging to (PT) and (PN) tenants. (D) SCOTT confiscated personal property of (PT) Thrower in the process

CLAIM NUMBER TWO

Per facts same rewritten herein the (D) SCOTT violated the (PT) United States Constitutional rights to be free from unconstitutional seizure in violation of the 4, 5, 14th Amendment when (D) Scott preformed a "citizen's arrest" when as a matter of law (D) Scott was not legally allowed to. (D) Scott acted in agreement, tandem, conspiracy, actions "inextricably intertwined", with (D) Hertz Brothers, (D) Sandra Hertz, (D) Randy Sullivan to detain, stall (PT) at (D) STI, call (D) Scott who rushed over and do "citizen's arrest", "assault and battery", kidnapped, search (PT) at (D) STI garage while (D) Hertz Brother(s) &/or (D) Sullivan watched per agreement.

RELIEF

Award \$100 million USD compensatory and punitive damages jointly and severally, all costs associated with action, towing fees, interest, expenses, cost of personal property taken, fees billed by (D) Scott 7/7/21, 7/8/21 broken glasses, broken phone, hospital expenses for ongoing injury to finger.

Any other relief this Court deems just and entitled to

Jury Trial Demanded

 
Albert Thrower pro'se Elizabeth Nelson pro'se

CERTIFICATE OF SERVICE

A copy of this 3rdAmended complaint has been served on the below
defendants after calling same to see if they agree with (Ps') position this
5/29/2024

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